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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/752,202	12/30/2000	David A. Eatough	42390P10210	8106
8791	7590	12/02/2004	EXAMINER	
BLAKELY SOKOLOFF TAYLOR & ZAFMAN 12400 WILSHIRE BOULEVARD SEVENTH FLOOR LOS ANGELES, CA 90025-1030			NGUYEN, QUANG N	
		ART UNIT	PAPER NUMBER	
		2141		

DATE MAILED: 12/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/752,202	EATOUGH, DAVID A.	
	Examiner	Art Unit	
	Quang N. Nguyen	2141	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 05 August 2004.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-32 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) \_\_\_\_\_ is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) 1-32 are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 02 April 2001 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1)  Notice of References Cited (PTO-892)

2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5)  Notice of Informal Patent Application (PTO-152)

6)  Other: \_\_\_\_\_.

***Detailed Action***

1. The amendment filed on 08/05/2004 have been entered and made of record. Claims 1-32 are presented for examination. Claims 11, 12, 15-22 and 28 have been amended.

***Election/Restrictions***

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-10 and 15-32 are drawn to a method and system for managing network related tasks on a network, comprising: (a) maintaining a pool of said network related tasks; (b) assigning a priority value to said network related tasks based on network bandwidth; (c) periodically monitoring available network bandwidth on said network; and (d) processing said network related tasks based at least in part on the priority values and the available network bandwidth, classified in class 709, subclass 103.

II. Claims 11-14 are drawn to a method for determining network connectivity and bandwidth, comprising: (a) transmitting a PING (Packet Internet Groper) from a source node to a destination node; (b) receiving an echo response at said source node from said destination node; (c) transmitting a bandwidth PING from

said source node to said destination node; (d) receiving a bandwidth echo at said source node; (e) reporting at least a portion of the data received in (b) and (d) to a network management system; and (f) if it is determined that the bandwidth echo indicates sufficient bandwidth to process one or more network tasks, then processing the one or more network tasks based on a priority ranking for each of the one or more network tasks and available bandwidth, classified in class 709, subclass 226.

3. The inventions are distinct, each from each other because of the following reasons:

Inventions Group I and Group II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable.

In the instant case, invention **Group I** has separate utility such as managing network related tasks on a network by (a) maintaining a pool of said network related tasks; (b) assigning a priority value to said network related tasks based on network bandwidth; (c) periodically monitoring available network bandwidth on said network; and (d) processing said network related tasks based at least in part on the priority values and the available network bandwidth (*i.e., scheduling multitasks based upon any considered factors, e.g., priority values and available network bandwidth*) (**709/103: Priority Scheduling**).

Invention Group II has separate utility such as determining network connectivity and bandwidth by (a) transmitting a PING (Packet Internet Groper) from a source node to a destination node; (b) receiving an echo response at said source node from said destination node; (c) transmitting a bandwidth PING from said source node to said destination node; (d) receiving a bandwidth echo at said source node; (e) reporting at least a portion of the data received in (b) and (d) to a network management system; and (f) if it is determined that the bandwidth echo indicates sufficient bandwidth to process one or more network tasks, then processing the one or more network tasks based on a priority ranking for each of the one or more network tasks and available bandwidth (*i.e., comprising means or steps for apportioning resources such as network bandwidth, to one or more processes/computers on a network*) (**709/226: Network Resource Allocating**). See MPEP § 806.05(d).

4. The inventions are distinct, each from each other because of the following reasons:

- a. These inventions have acquired a separate status in the art as shown by their different classification and their recognized divergent subject matter.
- b. The search required for one Group is not required for the other Group.

For the reasons above, restriction for examination purposes as indicated is proper.

5. A telephone call was made to the applicant's representative, Ms. Crystal D. Sayles (called and left voicemail messages on 11/22/2004 and 11/23/2004) to request an oral election to above restriction requirement, but did not result in an election being made.

6. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

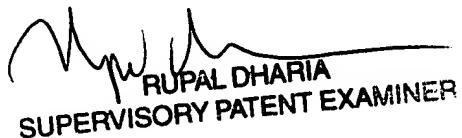
7. Applicant is requested to formally cancel the non-elected claims.

8. Applicant is also advised that the response must be submitted to the Office within 30 calendar days.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quang N. Nguyen whose telephone number is (571) 272-3886.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's SPE, Rupal Dharia, can be reached at (571) 272-3880. The fax phone number for the organization is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



RUPAL DHARIA  
SUPERVISORY PATENT EXAMINER